IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1958 OF 2004

Sidharth Ramesh Janmejay ... Applicant

versus

State of Maharashtra ... Respondent

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Mr. A. Majeed Memon, for the Applicant.

Mr. A.S. Gadkari, A.P.P., for the Respondent.

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CORAM : A.M.KHANWILKAR,J.

16th September 2004

ORAL ORDER :

1. Heard Counsel for the parties. Perused the affidavit in reply and the additional affidavit as well as the record of the case. The Applicant was arrested on 9th November 2003 by the Police of Crime Branch, Thane. The Police had received tip on the basis of which car driven by the Applicant, Maruti Zen bearing No. MH-04/AW-7213, which was proceeding towards Vashi

by Kalwa - Belapur Road, was searched and several boxes containing medicines were found in the car, worth Rs.4,25,582/-. In addition, two different number plates of car were also found in the car. The accused was unable to give satisfactory explanation about the source from where the medicines were procured or regarding the two different number plates. Besides, it was noted that the bilti found with the accused in the name of Shailesh Enterprises was a forged document. Accordingly, he was arrested and the articles were seized. The police registered Crime No. 184 of 2003 and proceeded with the investigation. During investigation, it was revealed that one Messrs. Picaso Health Care Company, Daman, a medicine manufacturing company, had manufactured some of the medicines, which were found with the accused. Besides medicines worth Rs.12,76,000/- of that company were stolen away in an incident of robbery, which had taken place in the company on 31st October 2003 by using a truck, in respect of which Crime No. 205 of 2003 was registered at Daman Police Station. During investigation, it was further revealed that the applicant, in collusion with the co-accused, was dealing in

business of sale of medicines illegally by using the forged labels of famous brands to the medicines of inferior quality and was engaged in preparing stickers, bottles, packing material and foils and get the medicines manufactured. It was revealed that the co-accused Zulabhai was helping the applicant in the manufacture of medicines, licensed medicines. The medicines were manufactured as per the order given by accused Vijay and then the medicines, after affixing the labels, were sent for sale to co-accused Rani alias Raghavendra Sunderdas. The investigation revealed that the accused were engaged in unlawful activities jointly and committed the offence of gaining pecuniary benefits and they worked as a group. Similar types of offences were registered against the Applicant and other members of the group at various places. The affidavit filed before this Court reveals that in all 8 offences have been registered in which the applicant and the other accused are implicated besides the present offence. Details of those offences are given against the crime number in respect of each case. In view of the materials collected during the investigation, the

investigating agency sought sanction of the Additional Commissioner of Police to invoke provisions of the Maharashtra Control of Organised Crimes Act, 1999 (for short, "the MCOCA") against the applicant and the other accused involved in the present crime. Accordingly, sanction has been obtained and offence of MCOCA has been registered in connection with the present crime against the applicant and other accused. The co-accused had applied for bail before the provisions of the MCOCA were applied to the present crime and were released on bail. Even after the provisions of MCOCA were applied, the co-accused came to be released on bail. The applicant, however, applied for bail before the Court below only after the charge sheet came to be filed. That application has been rejected by the Special Judge, MCOCA Court at Thane, vide order dated April 4, 2004. The applicant has, therefore, approached this Court by way of present bail application.

2. In all, four submissions were canvassed before this Court. The first contention was that

the applicant was entitled to be released on bail, as the investigating agency failed to file charge sheet within the statutory period as required under section 167 of the Cr.P.C., before applying the provisions of MCOCA as well as even thereafter. Inasmuch as the applicant was arrested on 9th November 2003, whereas the provisions of MCOCA were applied on 29th January 2004 and 90 days were completed on 7th February 2004. Till then, no charge sheet was filed. However, an application was filed on 7th February 2004 presented by the District Government Pleader and not the Public Prosecutor, at whose instance, time to file charge sheet came to be extended. The argument on behalf of the applicant is that the extension so granted was inappropriate and could not have been granted at the instance of the District Government Pleader. It is, therefore, argued that the extension granted will have to be ignored in which case it follows that the charge sheet was not filed within 90 days, for which reason the applicant deserves to be released on bail. The next contention canvassed before this Court is that the provisions of MCOCA have no application to the fact situation of the

present case. The third contention is that other accused arrested in connection with the present offence have already been released on bail by the trial Court and on the basis of parity, the applicant also deserves to be released on bail. It is lastly contended that the applicant has permanent place of business as well as permanent place of abode and is willing to abide by any condition that will be imposed by this Court.

3. The application is, however, resisted by the Respondents by filing affidavits as referred to above. The substance of the arguments canvassed on behalf of the Respondents is that there is prima facie material to hold that there are reasonable grounds for believing that the applicant is involved in the commission of the offence under the special enactment and it is not a case where this Court can hold that the applicant is not guilty of such offence. Besides, the applicant has been involved in series of offences of similar nature and, therefore, it is not possible to hold that he is not likely to commit any offence while on bail. Reliance is placed on the decision of the

Division Bench of this Court reported in 2004 ALL MR (Cri) 1553 in the case of Ranjitsingh Brahmajeetsingh Sharma v. State of Maharashtra. Reliance was mainly placed on the observations in para 27 of this decision to contend that the argument canvassed before this Court that the offence of MCOCA is not made out will have to be canvassed before the Designated Court and cannot be entertained before this Court. Reliance was also placed on the decision reported in 2003 ALL MR (Cri) 1061 in the case of Bharat Shantilal Shah v. State of Maharashtra, in particular on the observations made in paras 27, 28 and 29 thereof, where the Division Bench has construed the meaning of "continuing unlawful activity" and the expression "organised crime". Relying on the said observations, and the materials on record, including the contents of the charge sheet in the present case, the learned A.P.P. contends that the provisions of MCOCA have been rightly invoked. The learned A.P.P. also contends that the grievance made before this Court that the applicant ought to be released on bail on the ground of default on the part of the investigating agency in filing the charge sheet

is devoid of merit, because the charge sheet has now been filed within the extended time, which time was extended by the Court on the application filed by the District Government Pleader, who is also the Public Prosecutor of the concerned District. In the circumstances, it is submitted that the application be dismissed.

4. Having considered the rival submissions, I shall first deal with the contention regarding release of the applicant on the ground of default of the investigating agency in filing charge sheet within the specified time. Although this contention was raised by Mr. Memon during the arguments, but after the learned A.P.P. replied this contention, in the rejoinder Mr. Memon fairly accepted that this ground cannot be pressed into service in the fact situation of the present case. He fairly accepts that the application preferred by the District Government Pleader can be said to be sufficient compliance and in any case, since the charge sheet has been filed within the extended time granted by the Court, the Court will have to examine the application for bail on merits. In the

circumstances, it is not necessary to dilate further on this contention.

5. The next argument canvassed on behalf of the applicant is that the provisions of MCOCA have no application. Even this argument does not commend to me. The materials produced before this Court and the contents of the charge sheet clearly make out a case for application of the provisions of the MCOCA. In the present case, section 3(1)(ii) and 3(2) have been applied. Before I proceed to examine the second contention, it will be appropriate to reproduce the relevant provisions. Section 3 of the MCOCA reads thus :

> "3(1) Whoever commits an offence of organised crime shall,--
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> (i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees one lac;
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> (ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a

fine, subject to a minimum fine of rupees five lacs.

(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(3) Whoever harbours or conceals or attempts to harbour or conceal any member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(4) Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(5) Whoever holds any property derived or obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs."

Section 3 of the Act provides for punishment for organised crime. The expression "organised crime" has been defined in section 2(e) of the

Act, which reads thus :

> "'organised crime' means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency."

As the definition of "organised crime" refers to the expressions "continuing unlawful activities" and "organised crime syndicate", which have been separately defined in section 2(d) and 2(f) respectively, it will be appropriate to reproduce the said definitions at this stage.

> (d)"'continuing unlawful activity' means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence."
>
> (f)"'organised crime syndicate' means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime."

On plain reading of the said provisions, it is clear that the provisions of section 2(d), 2(e) and 2(f) are inextricable and the expression "organised crime" will have to be construed in the context of these definitions. Before we proceed to examine the purport of the expression "organised crime", it will be appropriate to advert to the Preamble of the Act, which will indicate the object and purpose of enacting this special enactment. The relevant extract of the same reads thus :

> "Whereas it was expedient to make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang, and for matters connected therewith or incidental thereto; . . . "

On plain language of this Preamble, it is obvious that the Act is a sui generis piece of legislation, which is enacted not only to "control" the criminal activity by organised crime syndicate or gang, but also for "prevention" thereof. The Statement of Objects and Reasons of the Act will have some bearing on construction of the expression "organised crime". The relevant portion of Statement of Object and

Reasons reads thus :

> "Organised crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fuelled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organised crime is very huge and has serious adverse effect on our economy. It is seen that the organised criminal syndicates make a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. There is reason to believe that organised criminal gangs are operating in the State and thus, there is immediate need to curb their activities.
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> It is also noticed that the organized criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice. . . ."

6. The main argument canvassed by Mr. Menon was that all criminal activities though "continuing unlawful activities" cannot constitute the offence of "organised crime". According to him, it is only such continuing unlawful activities, which are committed by using violence or threat of violence or intimidation or

coercion, or (such) other unlawful means will have to be construed as organised crime. To dispel this argument, learned A.P.P. placed reliance on the expression "or other unlawful means" occurring in section 2(e) of the Act. According to him, this is an expansive term and, irrespective of whether the continuing unlawful activity was committed by use of violence or threat of violence or intimidation or coercion, even then it will fall within the ambit of "organised crime" as defined in section 2(e), if it is further established that the objective of such activities was of gaining pecuniary benefits or gaining undue economic or other advantage for himself or any other person or promoting insurgency. I am in agreement with the submission canvassed on behalf of the learned A.P.P. for the State. The menace of organised crime has been repeatedly noticed and judicial notice thereof has been taken as back as in 1994 in the case of Shankar alias Gauri Shankar and others v. State of T.N. reported in (1994) 4 S.C.C. 478. Indeed, the said decision deals with the issue of penology and the quantum of sentence to be imposed in crimes committed in

organised manner. What is relevant for our purpose is to advert to the observations made by the Apex Court in para 61 of the said decision (supra), which reads thus :

> " . . . In large urban areas this kind of organised crime has taken deep roots. It has become the way of life of these organised criminal groups particularly indulging in underground unlawful activities. Eventually the underground economy has entered on the vitals of the society gradually rendering it malignant. The organised crime has profit as its primary goal to be achieved at any cost. The potential for criminal violence in such crimes is inherently present in an organised crime group. The activities such crime groups indulge in may vary numerously. Prostitution is an activity bad in social sense as witnessed and is prohibited legally. Yet for many potential buyers the services of prostitutes are goods in the strict economic sense of the term ‘goods’. The buyers are willing to pay for these goods in the market transaction. It is these monetary values, though illegal, underlying that eventually lead to growth of these organised crimes and further criminal specialisation whose only common aim is attainment of wealth primarily of course and then if possible power and influence by illegal means. It has thus become an enterprise not infrequently aiming at purchase of respectability. After all money is money and that which is illegally gained can seemingly be legally spent to achieve social status. That kind of criminally acquired social status is completely out of place and forlorn as to come anywhere near the concept of ‘mitigating circumstances’. . . ."

7. It will be useful to advert to another recent decision of the Apex Court in the case of State of Maharashtra v. Bharat Chaganlal Raghani and others, reported in (2001) 9 S.C.C. 1. In para 3 of the said decision, the Court has adverted to the menace of organised crime prevailing not only in Mumbai and this country, but all over the globe. The Apex Court went on to observe that generally known abroad as organised crime, it has been found to be a subject of fascination in popular culture and a major criminal justice concern in the western world. Such organised crimes pose various problems to the world community concerned to combat and fight it out. In para 4, the Court has adverted to the concept of organised crime as prevailing in Europe and America and the expression ‘organised crime’ has been found to be interchangeable with expression ‘professional crime’. In para 4 of the said decision, the Apex Court has observed thus :

> " In Europe, the terms ‘organised crime’ and ‘professional crime’ are largely interchangeable. As compared to American standards, the European criminal

> organisations are small-scale and short-lived. Such crimes are defined as involving a system of specifically defined relationships with mutual obligations and privileges and association of a small group of criminals for the execution of the intended crime. The eruption of organised crime in India is of recent origin and is at the initial stage. It is the need of the hour to control such criminal activities which tempt the persons involved to amass huge profit. Such crimes have not only a legal facet but have a social and economic aspect which is required to be felt and dealt with by all concerned including the judiciary, the executive, the politicians, the social reformers, the intelligentsia and the law enforcing agency."

Keeping the observations made by the Apex Court in mind, and in particular having regard to the Preamble of the present enactment, namely, MCOCA, and the Statement of Object referred to therein, to my mind, it is more than clear that this special law has been enacted to prevent and control the continual menace of organised crime, which is resorted to in different forms. It is, therefore, not possible to limit the meaning of expression "or other unlawful means" as has been suggested by the Counsel for the applicant to be read ejusdem generis with the expression "by use of violence or threat of violence or intimidation or coercion". On the other hand, the said

expression will have to be given proper meaning, so as to uphold the object and intent of the legislation, which is essentially to prevent and control the threat to the society caused by the illegal wealth generated "by various unlawful means" by organised syndicate or gang, who can be said to be indulging in professional crime. The learned A.P.P. has relied on the decision of our High Court in Bharat Shah’s case (supra), in particular on the observations made in paras 27 to 29 thereof. Besides the said observations, it will be appropriate to advert to observations in para 20, where it is observed that a statute must always be interpreted with reference to the objects for which it is enacted, with reference to the preamble of the enactment. It is further observed that insofar as the present enactment is concerned, the same is enacted by the Legislature for the purposes of making special provisions for the prevention and control of criminal activity by a person or a gang and for matters connected therewith or incidental thereto meaning thereby connected and incidental to organised crime and organised crime syndicate. In para 23, while dealing with the argument canvassed on behalf of

the writ petitioner that the definition of continuing unlawful activity is vague, the Court observed that there was no substance in the said argument. The Court has recorded two good reasons for rejecting that submission. Firstly, it was not a case of vagueness and secondly, while adverting to the exposition of the Supreme Court, wherein it has been laid down in very clear terms that the Legislation cannot be struck down on the ground of vagueness. Thereafter, the Division Bench proceeded to examine the purport of expression "continuing unlawful activity" as can be discerned from the observations made in para 25. Those observations are as under :

> " . . . If we read the definition again, what has been defined as continuing unlawful activity is a member of organised crime syndicate in respect of which any activity prohibited by law and done repeatedly i.e. more than once for which charge sheet has been filed in the court of competent jurisdiction in the past ten years. The purpose of definition is to define what continuing unlawful activity is and it is for the purposes of defining what is continued unlawful activity that those charges are to be taken into consideration. Mere taking into consideration of such charges cannot result in discrimination of the kind alleged by Shri Manohar. The activity must be continuing unlawful activity and to define it with clarity it

> is provided that any person who in the past was charge sheeted for more than one charge of such activity or crime the cognizance of which has been taken and imprisonment for which is more than three years should be taken into account. The fact of the person having been chargesheeted in such cognizable offences in the past makes the unlawful activity, continuing unlawful activity. . . ."

In para 27, it is observed thus :

> " . . . The provision only defines what is continued unlawful activities and refers to whether a person has been charged over a period of ten years for the purpose of seeing whether the person is charged for the first time or has been charged often. The circumstance of conviction or acquittal that followed the charge are not material. The limited purpose is to see antecedents of the person. Not to convict. . . ."

In para 28, while considering expression "organised crime", it is observed thus :

> " . . . Organized crime is something which is continued unlawful activity and that continued unlawful activity is repeatedly indulging or facing charge of indulgence in crimes punishable with three years or more. . . . "

It is also relevant to advert to the observations made in para 29, which read thus :

> " . . . It is true that these sections are interconnected and dependent on each other for their construction. Once we read section 2(1)(d) to mean unlawful activity as quoted above the definition

> of organized crime as contained in section 2(1)(e) does not suffer from any flaw. . . ."

So understood, the meaning of expression "organised crime" as can be derived on conjoint reading of section 2(d), (e), and (f) is that, - Organised crime means an (any) activity prohibited by law for the time being in force (a criminal activity by use of violence or threat of violence or intimidation or coercion, or other (any) unlawful means) with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either by an individual, singly or jointly, either as a member of a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime, or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent court within the preceding period of ten years and that court has taken cognizance of such offence.

8. That brings me to the facts of the present case. As mentioned earlier, the charge sheet as has been filed does disclose involvement of the applicant in the alleged offence. The applicant has been found to be indulging in similar activities in the past by himself or with the assistance of different persons, which clearly qualifies the definition of "organised crime syndicate". Viewed in this perspective, it is not possible to take the view that the applicant is not guilty of the alleged offence. Besides, the record clearly indicates that the applicant has been continuously engaging himself in committing offence of similar nature and there are already 8 offences registered against him. If it is so, it is not possible to take the view that he is not likely to commit any offence while on bail. Indeed, the Counsel for the applicant gave assurance that the applicant, if released on bail, would abide by any conditions, including strict conditions to be imposed by this Court. But having regard to the nature of evidence, it is not possible to take a lenient view of the matter. It was vehemently submitted that the co-accused have already been released on bail

both before the invocation of the provisions of the MCOCA and even subsequently. The argument of parity does not commend to me. Merely because the co-accused have been released on bail, that by itself cannot be a ground to release the present applicant on bail. In any case, the involvement of the applicant has been found to be direct, as he was himself driving the vehicle in question. Besides, the investigation reveals that the applicant is the mastermind of the organised crime as he is involved in similar crimes in the past. The offences registered against the applicant in the past would include charge of robbery, amongst other serious charges, which are punishable for more than three years. As more than two charge sheets have already been filed against the applicant of such cognizable offences and the concerned Court has also taken cognisance of the said offences, to my mind, the applicant does not deserve to be released on bail, keeping in mind the special provisions applied to the case on hand in the form of section 21(4) of the Act, read with the other provisions of the MCOCA, in addition to the provisions contained in the Code of Criminal

Procedure. The application will have, therefore, to be dismissed and is accordingly dismissed.

9. Although this application is dismissed, it will be open to the applicant to approach the Designated Court dealing with MCOCA Cases, contending that the provisions of the MCOCA have no application. If such application is filed, the same will be considered on its own merits in accordance with law.

(A.M.KHANWILKAR,J.)